Congress of the United States

Washington, DC 20515
March 30, 2004

The Honorable George W. Bush
President
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Bush:

As you know, in early February, the Organization of Petroleum Exporting Countries (OPEC) agreed to an immediate reduction in output of 1.5 million barrels, with an additional 1 million barrel reduction possible on April 1, 2004.

Since OPEC's actions in February, oil prices have surged 12 percent, with some analysts expecting $2 a gallon gasoline to be common place across the United States in the coming months. Such high gas prices will harm consumers, farmers, small businesses, and manufacturers. They will also increase the likelihood of inflation, inflate the unsustainable trade deficit, and undermine the economy.

Energy Secretary Abraham recently said that the U.S. is not going to "beg OPEC" for oil. We agree. Fortunately, there is a better way to respond to OPEC's illegal market manipulation and price fixing: file a case against OPEC at the World Trade Organization (WTO) and enforce "rules-based" trade.

Of the 11 OPEC countries, six are members of the WTO (Kuwait, Indonesia, Nigeria, Qatar, Venezuela, and United Arab Emirates); two have observer status and have applied to join the WTO (Saudi Arabia, Algeria); and only three are not involved with the WTO in any way (Libya, Iran, Iraq). In addition, of the remaining large oil-producing nations, Mexico and Norway are members of the WTO, and Russia and Oman have applied for membership. Therefore, filing a case could have widespread impact.

The General Elimination of Quantitative Restrictions, otherwise known as Article XI of the original General Agreement on Tariffs and Trade (GATT) adopted in 1947, which was also a part of the Uruguay Round text in 1994 that created the WTO, states:

> "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party."

In other words, it appears that colluding to set production levels would violate WTO rules, specifically Article XI.

The precise meaning of this provision is fleshed out in a 1988 GATT Panel Report on "Japan - Trade in Semi-conductors." The Panel noted:

> "...this wording (in Article XI) was comprehensive: it applied to all measures instituted or maintained by a contracting party prohibiting or restricting the importation, exportation or sale for export of products other than measures that take the form of duties, taxes, or other charges...This wording indicated clearly that any measure instituted or maintained by a contracting party which restricted the exportation or sale for export of products was covered by this provision, irrespective of the legal status of the measure."

The 1988 GATT panel report cited above clarifies that only duties, taxes or other charges are allowable, not pacts among countries to limit production of a product for export. The oil production quotas devised by OPEC clearly qualify as a "quantitative restriction" and we would request that you file a case at the WTO arguing this point.

Finally, we want to bring your attention to Article XX, which sets out a series of broad exceptions to Article XI. Article XX notes that none of the exceptions are valid if they are "applied in a manner which would constitute...a disguised restriction on international trade." Therefore, the broad exception in Article XX that allows restrictions for the "conservation of exhaustible natural resources" would not protect OPEC's market manipulation because OPEC is not restricting oil production due to conservation concerns or to preserve an exhaustible supply. Rather, OPEC is restricting supply solely in order to influence world oil prices which clearly qualifies as a "disguised restriction on international trade."

The United States government has filed a number of cases with the WTO on behalf of the U.S. business community, it is past time to show a similar commitment to U.S. consumers and fuel-dependent industries who are being gouged by OPEC. Thank you, in advance, for your prompt attention to this request.

Sincerely,

Letter to President Bush re: OPEC and the WTO
March 30, 2004

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Cc: Robert Zoellick, U.S. Trade Representative